IN THE SUPREME COURT OF THE STATE OF UTAH

BUD ALLEN, *et. al.,* Petitioners, v. UTAH PUBLIC SERVICE COMMISSION, and QUESTAR GAS COMPANY, Respondents.	Case No. 20060279 (Consolidated with Case No. 20060280) Utah Public Service Commission Docket Nos. 04-057-04, 04-057-09, 04-057-11, 04-057-13 and 05-057-01

Pursuant to Rules 24, 26, and 27 of the Utah Rules of Appellate Procedure, the Utah Committee of Consumer Services ("Committee"), a state agency advocating on behalf of residential and small commercial enterprise consumers regarding public utility matters coming before the Public Service Commission of Utah, submits its Responsive Brief in this case.

STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction in this matter pursuant to Utah Code Ann. §78-2-2(3)(e)(i) (2001).

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether Appellants have standing to appeal the Commission's order approving the settlement in this proceeding. This is an issue of law.

Standard of Review: Correction of error, granting the agency no deference. *Committee of Consumer Services v. Pub. Serv. Comm'n*, 75 P.3d 481 (Utah 2003).

2. Whether the August 2004 Commission Order denying Questar Gas Company ("Questar Gas" or "Utility") rate recovery of coal bed methane processing costs

governs the outcome of the issues of prudence and rate recovery in this proceeding. This is an issue of law.

Standard of Review: Correction of error, granting the agency no deference. *Committee of Consumer Services v. Pub. Serv. Comm'n*, 75 P.3d 481 (Utah 2003).

3. Whether the prudence of the February 1, 2005-forward coal bed methane processing costs Questar Gas Company has asked to be included in rates should be determined by considering the Utility's action and circumstances at the time it decided to incur those costs or its action and circumstances at the time the processing plant was built. This is an issue of law.

Standard of Review: Correction of error, granting the agency no deference. *Committee of Consumer Services v. Pub. Serv. Comm'n*, 75 P.3d 481 (Utah 2003).

4. Whether settlement by the parties of a long-standing and technically complex regulatory dispute in accordance with statutory law encouraging the settlement of disputes before the Commission should, absent extraordinary circumstances, be contestable on appeal by persons who chose to not participate in the dispute proceeding. This is an issue of abuse of discretion,

Standard of Review: Abuse of discretion. *Morton International, Inc. v. Auditing Division*, 814 P.2d 581, 587-91 (Utah 1991); *Committee of Consumer Services v. Pub. Serv. Comm'n*, 75 P.3d 481 (Utah 2003).

5. Whether there is sufficient evidence in the record to support the Commission's determination that the coal bed methane processing costs at issue were

prudently incurred and the resulting rates just and reasonable. This is an issue of abuse of discretion.

Standard of Review: Abuse of discretion and substantial evidence. *US West Communications, Inc. v. Public Service Comm'n*, 901 P.2d 270, 273 (Utah 1995). *Morton Int'l v. Auditing Division, Utah State Tax Commission,* 814 P.2d 581, 586-87 (Utah 1991).

6. Whether due process requirements of sufficient notice and a fair hearing were complied with in this proceeding. This is an issue of law.

Standard of Review: Correction of error. *Committee of Consumer Services v. Pub. Serv. Comm'n*, 75 P.3d 481 (Utah 2003).

DETERMINATIVE STATUTORY PROVISIONS

The statutory provisions that may determine the issues raised in this appeal are found in the Public Utility Statutes, Utah Code Title 54. They are the following:

Utah Code Ann. § 54-3-1 (2004)	Utah Code Ann. §54-4-4 (West Supp. (2006)
Utah Code Ann. § 54-7-1 (2004)	Utah Code Ann. §54-4-26 (2004)
Utah Code Ann. § 54-7-12 (2004)	Utah Code Ann. §54-7-13 (2004)
Utah Code Ann. § 54-7-15 (2004)	Utah Code Ann. §54-10-4 (2004)

Other statutory provisions that may determine the issues raised in this appeal are:

Utah Code Ann. § 63-46b-19 (2004)	Utah Code Ann. § 63-46b-13 (2004)
Utah Code Ann. § 63-46b-14 (2004)	Utah Code Ann. § 63-46b-16 (2004)

STATEMENT OF THE CASE

The Appellants' Opening Brief presents an argumentative and inaccurate review of

the factual and procedural background of this case. The Committee, therefore, rejects the Appellants' Statement of the Case and provides its own.

1. Nature of the Case

This appeal addresses the finality that should be accorded the settlement of a technically and historically complex regulatory dispute by agreement of the participating and informed parties. The settlement, and the Utah Public Service Commission's ("Commission") order approving it, address Questar Gas Company's ("Questar Gas" or "Utility") duty to provide safe, efficient and reasonable natural gas service, and its corresponding entitlement to rate recovery of operating expenses reasonably incurred in the discharge of that duty. The Appellants' Opening Brief also asserts due process claims of lack of adequate notice and bias on the part of the Commission Chairman.

2. Course of Proceedings

The issue of Utility entitlement to rate recovery of coal bed methane gas ("coal bed methane," "coal seam gas" or "CBM") processing costs goes back to the early 1990s when new drilling and recovery technologies made commercial production of that gas possible. The Utility first sought rate recovery of its CBM processing costs in a November 25, 1998 application to the Commission. That application sought approval for the Utility's contract with an affiliate for CBM processing services and for rate recovery of the resulting costs in a 191 Balancing Account cost pass-through proceeding. The Commission's December 3, 1999 order in that case (Docket No. 98-057-12) concluded that the Utility must seek rate recovery in either a general rate case or an abbreviated rate

proceeding.[1]

As a result of that Commission order, the Utility, on December 16, 1999, filed a general rate case (Docket No. 99-057-20) that included an application for rate recovery of its affiliate contract costs for CBM processing services. After approving inclusion of the record of the Docket No. 98-057-12 proceeding, the Commission's August 11, 2000 order approved a disputed settlement ("CO2 Stipulation") that allowed partial rate recovery of the Utility's CBM gas processing costs despite a Commission finding that

> the record is insufficient to permit us to determine whether the Company's analysis of options. . . was sufficiently objective . . . [or] options were ruled in or out as a result of the influence of affiliate interests.[2]

The Commission concluded:

---

[1]The Utility appealed the Commission's decision to this Court, which set aside the Commission's determination and remanded the case back to the Commission for further action in accordance with this Court's ruling. *Questar Gas v. Utah Public Service Comm'n*, 34 P.3d 218 (Utah 2001). The Court's remand was addressed in further proceedings before the Commission that culminated in its August 30, 2004 Order in a consolidated Commission docket. That Order is a central focus of the Appellants' case.

[2]Commission's August 11, 2000 Report and Order, Docket No. 99-057-20, p. 27.

> Clearly, QGC has the burden to demonstrate the decision to enter the contract is a prudent one. Parties differ as to whether it did so successfully. But whether or not QGC met this burden, *we can and do conclude that its decision to procure gas processing has yielded the required result,* that is it has effectively protected the safety of its customers. This means the costs of gas processing can be legitimately recovered in rates.[3]

The Committee opposed the Utility-Division settlement and appealed the Commission's decision to this Court (Case No. 20000893-SC), which, in an August 1, 2003 decision, rejected the contested settlement and the Commission's reliance on a "safety rationale" to award rate recovery. This Court concluded:

> If the record had permitted, the Commission could have carried out its initial obligation to review the prudence of the CO2 plant contract and its terms, holding Questar Gas to its burden of establishing that the decision to enter into the contract and the cost it agreed to were prudent and not unduly influenced by its affiliate relationship with Questar Pipeline. Since the Commission found that no such record was or could be made available, it should have refused to grant a rate increase that included CO2 plant costs. We therefore overturn the Commission's decision to accept the CO2 Stipulation and

[3] *Id.* (emphasis added).

to grant the rate increase proposed therein.[4]

Upon remand, and after giving the parties a further opportunity to marshal the evidence in the record, the Commission, in an August 30, 2004 order in Docket Nos. 99-057-20, *et al.* ("August 2004 Order"), concluded the Utility had failed to meet its burden of proof of showing its affiliate contract for CBM processing services was prudent and rejected rate recovery of the June 1999 through May 2004 CBM processing costs at issue in the settlement stipulation. It stated:

[4]*Consumer Services v. Public Service Com'n,* 2003 UT 29, 75 P.3d 481, 486 (Utah 2003).

> we conclude that Questar Gas has not met the burden of proving its actions constituted a prudent response to the introduction of lower Btu coal-seam gas into the Questar Gas distribution system. . . . We therefore reject the CO2 Stipulation and deny recovery of the processing costs during the period from June, 1999 to May 2004.[5]

[5]Commission's August 30, 2004 Order, p. 49. Contrary to the inferences and assertions in Appellants' Opening Brief, the August 2004 Order ultimately determined that the Utility failed to meet its burden of proof and not that the affiliate contract for CBM processing was imprudent. Commenting on the insufficiency of the record for purposes of making a prudence determination, the Commission noted at page 35 of that

order: "[t]oo many questions remain unanswered," and at page 45:

> [o]n this record, we find that affiliate influence is clear. The degree to which it is 'inappropriate'. . . is unknown because explicit analyses by Questar management is *(sic)* absent.

The Commission commented even earlier on the insufficiency of the record for purposes of determining prudence,(*see* "the record is insufficient" statement, page 5, *supra*), and it commented yet again in its January 6, 2006 Order in this proceeding, stating, on page 33: "[w]e were critical in our [August] 2004 Order of the lack of documentation in the Company's decision-making process in 1997 and 1998." But then, on pp. 37-38 of that order it stated (emphasis added):

> "The Company [as shown by the record in this proceeding] conducted a transparent decision-making process open to the public and subject to scrutiny by any interested person.. . .
>
> The Company identified the alternatives. . . , employed reasonable methods and criteria in evaluating the alternatives, and adequately recorded and documented its evaluation. The Company carefully considered potential conflicts between affiliates and placed the interests of its customers before those of its affiliates. *This process satisfies the concerns outlined in our [August] 2004 Order*.

Although it rejected rate recovery of the Utility's June 1999 through May 2004 CBM processing costs, the Commission concluded its August 2004 Order with the notice that it would

> address, in a separate docket, how to craft a long-term solution to the compatibility of customer appliances with natural gas containing coal-seam gas consistent with the utility's obligation to provide safe commodity and service to its customers.[6]

In accordance with that notice the Commission opened Docket No. 04-057-09 in September 2004 and chaired thereunder six formal technical conferences that were held from October 2004 through January 2005.

Following this regulatory review of the CBM compatibility problem and its possible solutions, the Utility, on January 31, 2005, initiated this proceeding by filing an application with the Commission (Docket No. 05-057-01, *et. al.*) asking for rate recovery of costs resulting from its decision to continue processing CBM by means of its existing affiliate contract for processing services.

In April 2005, the Utility supplemented its application with written testimony and documentary evidence. That testimony and evidence included: (1) 32 pages of sworn testimony by Barrie L. McKay, with attached exhibits, Record 235, providing a

[6]Commission's August 2004 Order at 50.

background history of the CBM problem, a statement of the rate recovery result the Utility seeks in this proceeding, and the process it intends to follow for establishing its prudence and entitlement to rate recovery; (2) 70 pages of sworn testimony by Lawrence A. Conti, with numerous attached technical exhibits, Record 246, tracing the development of FERC interstate pipeline regulation and standards; reviewing the difficulties of providing interchangeable gas supplies to the northern and southern parts of the Utility's distribution system, reviewing the 1998 decision to lower the heat content range of the gas supply the Utility manages for customers, the temporary sufficiency of blending to solve the CBM gas problem, the possible alternative remedies to solve that problem, and why CBM gas processing is still the superior remedy; (3) 31 pages of sworn testimony by Robert A. Lamarre, with accompanying exhibits, Record 279, tracing the development of CBM production in the United States, identifying the size of CBM reserves in the Rockies and elsewhere, and showing the value of CBM as a new gas supply resource and why the large growth in commercialization of that gas could not have been accurately predicted prior to 1998; (4) 30 pages of sworn testimony by Alan J. Walker, with accompanying exhibits, Record 283, showing the quantifiable benefits of CBM production for Utility customers; (5) 23 pages of sworn testimony of Robert O. Reid, PH.D.,with accompanying exhibits, Record 297, on further savings that accrue to Utility ratepayers because of the accessibility of CBM gas production; and (6) 23 pages of sworn testimony of Charles Benson, with accompanying exhibits, Record 304, showing CBM gas combustion tests and analyses.

After extensive discovery and analysis of the Utility's application by the Committee and Division and their retained expert consultants,[7] the parties negotiated and concluded a comprehensive settlement that disposed of the outstanding issues and allowed the Utility to recover CBM gas processing costs incurred after January 31, 2005.

The parties' settlement was regularly noticed-up on October 11, 2005 for an October 20, 2005 Commission hearing. At the hearing, witnesses for the parties testified regarding the development of the case, initial party positions and the basis for each party's settlement position.

Mr. Dan Gimble, testified for the Committee. He summarized the report and conclusions of Committee expert consultant, Mr. Dwight Pfenning of Causey Engineering, Dallas, TX, that the presence of CBM in the Utility's distribution system did result in an increased safety risk due to increased carbon monoxide levels and flame roll-out, for customers using gas furnaces and water heaters that had not been adjusted to burn

[7]Commission's January 6, 2006 Order, p. 36. The Committee retained expert consultants to review the Utility's Application after Mr. Ball's departure as Director of the Committee in March 2004.

a lower Btu gas stream.[8]

[8]Reporter's October 20, 2005 Transcript of Proceedings, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 004-057-13 and 05-057-01, pp. 33-34, Record 2297. The Committee had maintained in earlier proceedings that the Utility had never clearly demonstrated that CBM was a safety threat to customers.

Mr. Gimble distinguished the Committee's position in this proceeding from its position in earlier proceedings where it opposed any rate recovery of CBM processing costs. He stated the Committee's cost causation argument in earlier proceedings "becomes less credible" as a result of the evidence in the record of this proceeding that shows the Utility is now purchasing "substantial volumes of coal seam gas supplies in recent years" – "25 to 40 percent of its overall market purchases." In past cases "Questar was purchasing minimal amounts of coal seam gas for its customers, I think less than 5 percent," and the Committee was able to argue "the coal seam gas was contractually destined for other markets but was reaching the Wasatch Front via displacement and providing really no offsetting benefit to the CO2 [processing] costs" the Utility was seeking to pass on to customers. Now, however, "[t]he simple fact is that Questar [Gas] has increasingly relied on coal-seam gas to meet its growing retail demand requirements."[9]

Mr. Gimble then testified regarding a second reason for the Committee's change of position in this proceeding, that:

[9] *Id.* at 35-36.

> the [Utility] has submitted compelling testimony in evidence showing that a combination of blending and diverting coal-seam gas under [Questar Pipeline's] mainline 104 [pipeline] for delivery into Kern River system does not entirely eliminate the need to occasionally process coal-seam gas to protect the safety of Questar's customers. In recent years, either on-plant maintenance on ML 104 on [*sic*] [or] the favorable market prices on the Kern River system has resulted in significant volumes of coal-seam gas flowing to the Payson gate and on to Questar Gas's distribution system. Therefore, CO2 processing is the most effective remedy available to address this situation."[10]

Regarding Committee concerns about affiliate conflict of interest, Mr. Gimble testified:

> The Committee continues to maintain that the management of an independent LDC [local gas distribution company or utility] would have contested any attempt by a pipeline company to pass along the gas management costs at issue in this docket. While customers [*sic*] [Questar Corporation] paid a very heavy price in non-recovery [of] CO2 processing costs of about $40 million, it nevertheless generated a profitable business from transporting, gathering and storing coal-seam gas.
>
> The affiliate conflict issue led the Committee to conclude that Questar would have to give up all claims to recover past CO2 processing costs in any settlement package.[11]

After considering the evidence in the record, the Commission approved the parties' settlement in a January 6, 2006 Commission order that concluded:

---

[10] *Id.* at 36.

[11] *Id.* at 37.

> Coal bed methane is now an important part of the gas supply purchased by Questar Gas for its customers. However, the use of this gas creates a significant safety risk for customers who have not adjusted their appliances to properly burn this gas. Providing a transition period for customers to have their appliances inspected and, if necessary, adjusted to the range now specified in Questar Gas's tariff is reasonable both because of the uncontested safety concerns and because customers need additional time to complete necessary inspections and adjustments. Given the extensive investigation and analysis undertaken by Questar Gas, the Division and the Committee to identify and compare alternatives for dealing with this risk, we find that operation of the CO2 Removal Plant in accordance with the terms of the Stipulation provides a reasonable, reliable, cost-effective solution during the necessary transition period.
>
> Based on the findings of fact in the foregoing sections of this Order, we conclude that Questar Gas's use of the CO2 Removal Plant from and after February 1, 2005 to manage the heat content of its gas supplies is prudent and that the partial recovery of costs provided in the Stipulation is reasonable and in the public interest.[12]

On November 4, 2005, after the Commission proceeding was over, but before issuance of the Commission's order, Appellants Ball and Geddes filed late public witness statements, Record 328 and 330, that alleged lack of proper notice regarding the October 20, 2005 hearing to approve the settlement and Committee and Division failure to fulfill their statutory duties in agreeing to the settlement. Thirteen days later, Appellants Ball

[12]Commission's January 6, 2006 Order, p. 38.

and Geddes petitioned to intervene in the concluded proceeding, Record 336, asserting lack of notice and that important affiliate interest and prudence issues addressed in earlier proceedings had not been properly considered by the settling parties. They requested that the Commission hold "a full evidentiary hearing."[13]

The Commission denied the petition to intervene in an order issued the same day it issued its January 6, 2006 order approving the settlement, concluding the intervention

[13]Roger J. Ball and Claire Geddes Request to Intervene, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13; and 05-057-01, pp. 11-12. Record, 336.

would materially impair the interests of justice and conduct of the adjudicative proceedings.[14]

February 6, 2006, Appellants Ball and Geddes and 53 other persons who are the additional 53 Appellants in this appeal requested the Commission to reconsider its order approving the settlement,[15] and Appellants Ball and Geddes' requested the Commission

[14]Commission's January 6, 2006 Order on Request to Intervene. Docket Nos. 04-057-04; 04-057-09; 040-057-11; 04-057-13 and 05-057-01. Record 1150. The Utah Administrative Procedures Act, Utah Code Ann.§63-46b-9 (West 2004), requires that third party intervention be denied if the "interests of justice and the orderly and prompt conduct of the adjudicative proceedings will be materially impaired by allowing the intervention."

[15]February 6, 2006 Request of Petitioners for Reconsideration of the Report and Order of the PSC, Issued January 6, 2006, Approving a Gas Management Cost Stipulation. Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01. Record, 1156. February 6, 2006 Request of Petitioners Roger Ball and Claire Geddes for Reconsideration of the Report and Order of the PSC, Issued 1/6/06, Approving a Gas

to reconsider its denial of their intervention petition.[16] The Commission did not respond to either request, making its orders approving the settlement and denying intervention final.

March 27, 2006, Mr. Ball and Ms. Geddes and the 53 other Appellants filed separate petitions for appellate review of the Commission's order approving the settlement. This Court, by its Order of June 5, 2006, consolidated the two petitions under Docket No. 20060279.

3. Statement of Facts

CBM natural gas

CBM in recent years has become a vital natural gas resource for this country and the Rocky Mountain region in particular. According to the Utah Geological Survey:

Management Cost Stipulation. Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-03 and 05-057-01.

[16]February 6, 2006 Request of Petitioners Roger Ball and Claire Geddes for Reconsideration of the Report and Order of the Utah PSC Issued January 6, 2006, Denying them Intervention, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01. Record, 1159.

> Over the past 10 years, gas recovered from deep coal beds has become a significant part of Utah's natural gas supply and reserves. The U.S. Energy Information Administration reports that in 2000 coal bed gas made up about 35 percent of Utah's 4.5 trillion cubic feet (Tcf) of proven natural gas reserves. Thus, coal bed gas, once regarded as mainly a safety hazard for underground coal mines, has been transformed from a poorly understood resource to a major new source of natural gas in Utah, and elsewhere in the U.S.[17]

Undisputed testimony in the record of this proceeding states:

> Natural gas from coals becomes more significant every day as demand for all types of energy increases. . . .CBM currently supplies approximately 10% of the gas used every day in the United States.[18]

CBM gas has accounted for up to 40% of the Utility's annual purchased gas supply and saved Utility customers over $36 million in fuel costs alone in recent years.[19]

---

[17] Survey Notes, Utah Geological Survey, Volume 34, Number 2, June 2002, p.12.

[18]Undisdputed April 15, 2005, Direct Testimony of Robert A. Lamarre, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13; and 05-057-01, p.15. Record 279.

[19]Undisputed April 15, 2005 Direct Testimony of Utility witness Alan J. Walker, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01, p.20. Record 283.

Although the largest CBM production source nearest to the Utility's distribution system continues to be the Ferron fields near Price, Utah, new production fields are emerging in the Powder River Basin in northeastern Wyoming, and in the Washakie Basin in south-central Wyoming. CBM from these production fields is transported to market on the Kern River pipeline, which also delivers to Questar Gas.[20]

While its value is now recognized, CBM was not always so well received. During most of the 1990s it was an unwanted nuisance in the Utility's distribution system because its lower Btu content would not safely and efficiently burn in customers' gas appliances that for decades had been set to burn the higher Btu-content gas streams that were then available and constituted the Utility's gas supply.[21] Even when CBM production from the Price, Utah area began to

[20]Undisputed April 15, 2005 Direct Testimony of Utility witness Robert A. Lamarre, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01, pp. 20-22. Record 279.

[21]Alan K. Allred, a Utility witness in the initial 1998 proceedings for rate recovery

substantially increase during the mid-1990s, the future size and significance of that production was not predictable or appreciated until at least 1998, or later.[22]

CBM began entering the Utility's distribution system in the early 1990s as a result of being transported to market in a Questar Pipeline Company pipeline that provided interstate transport of a major portion of the Utility's gas supply. The CBM entered the pipeline near Price, Utah, blending with the Utility's gas supply moving in that pipeline from entry points east of Price to a delivery point near Payson where it entered the Utility's distribution system.

This natural blending of CBM with higher Btu gas in the interstate pipeline was sufficient

---

of CBM gas processing costs (Docket No. 98-057-12), testified that the Utility's earlier Btu range for its gas supply had been established "for as far back as anybody working in the company can remember, or as far back as any records we could find." Rep. June 7, 1999 Tr. of Proceedings. Docket 98-057-12, page 75.

[22]Appellants allege on pages 67-68 of their Opening Brief that "as early as the mid-1990s, [Questar Gas] knew about or should have anticipated" the growth of CBM into a major new source of gas supply. Expert testimony in the record of this proceeding, on the other hand, shows that Price-area CBM production is now "one of the 10 largest [natural gas] discoveries made in the United States in the past 15 years," and "no one realized the true significance of this discovery and its associated production volumes until 1998." *See, generally*, the April 15, 2005 Direct Testimony of Robert A. Lamarre, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01, pp.26-30. Record 279.

to solve the problem of CBM incompatibility with Utility customers' gas appliances until the mid-1990s, when increasing volumes of CBM entering the pipeline began displacing, rather than blending with, the Utility's gas supply. In November 1998, after it was clear that blending was no longer a sufficient remedy, the Utility contracted with Questar Transportation Services Company ("Questar Transportation Services"), a Questar Pipeline subsidiary, for CBM processing services at a CO2 removal plant Questar Transportation Services built and operates for that purpose, to remove sufficient inert CO2 from the CBM to raise the gas' heat content to a sufficient level prior to it reaching the Utility's distribution system.

The Utility Has Changed its Regulated Gas Heat Content Range

CBM was not the only factor affecting the heat content of the Utility's gas supply. The Btu decline which CBM caused in gas flowing to the southern sector of the Utility's distribution system was often matched by a similar decline in gas flowing to the northern sector of the Utility's distribution system. There the cause was recurring commercial extraction by producers of higher Btu value gas constituents, such as ethane and propane, from natural gas sources available to serve the northern portion of the Utility's distribution system.[23]

[23] April 15, 2005 Direct Testimony of Utility witness Lawrence A. Conti, pp 26-28. Record 246.

The Utility responded to these changes in its gas supply in early 1998 by petitioning for, and receiving, Commission approval to *lower* the heat content range of the natural gas it is obligated to provide customers to a level that better corresponded to the nature of the gas supply it believed would be available for distribution in the future.[24] The Utility at that time informed gas appliance manufacturers and local dealers and plumbing and heating contractors of the need to adjust the customers' gas appliances they sold or serviced to safely and efficiently burn a lower heat content gas, and initiated a program to inform customers of the need to inspect and adjust their gas appliances as well.[25]

---

[24]The Commission's August 30, 2004 order summarized this change in the approved heat range for Questar Gas' gas supply as follows:

> Following a series of meetings and discussions beginning in January 1998 with the Commission, the Division of Public Utilities (Division), and the Committee of Consumer Services (Committee) to notify us of an imminent safety problem associated with heat-content levels in the natural gas supplies it was receiving from Questar Pipeline Company (Questar Pipeline), an affiliated company, and the incompatibility of that gas with current appliance set points, Questar Gas Company (Questar Gas or Company) filed Advice Letter 98-02 on April 21, 1998, reducing the heat-content operating range in its tariff from 1020 to1320 Btu per cubic foot (cf) to 980 to 1170 Btu/cf. The Division filed a memorandum on April 30, 1998, supporting the change, and no party objected to it. The change became effective on May 1, 1998. [August 30, 2004 Order, Docket Nos. 03-057-05; 01-057-14; 99-057-20; and 98-057-12, p. 2].

[25]Appellants incorrectly state that the Utility's program to adjust customers' gas appliances "only recently has been launched." Appellants' Opening Brief at 17. In response to a Commission question during the 2000 hearing in Docket No. 99-057-20 asking if the appliance adjustment program

was underway, Utility witness, Alan Allred stated:

> It's been communicated to all dealers and installers, heating plumbing contractors. They are now, should be every time they service an appliance, every time they install a new appliance, it should be at that set point, just as under the old standard it should have been at the old one.
>
> In addition to that, as Questar Gas's service technicians are in homes doing adjustments and have time or as they get requests from customers, they are doing that work. But there's, you know, 100 or 50 of those people, and they have to do all the other service work, and there's 670,000 customers. So obviously they're not going to do all of the work in 10 years. You know, a substantial amount of it's going to have to be done by heating and plumbing contractors as they do replacements or as they do adjustments.

Reporters' June 23, 2000 Transcript of Proceedings, Docket No. 99-057-20, pp. 1008-1009.

In order to provide a safe and efficient gas supply to customers whose gas appliances had been adjusted to burn a lower Btu content gas *as well as* customers whose appliances had not yet adjusted, the Utility concluded it would process the CBM for a projected ten-year 'transition period' so customers would have sufficient time to have their appliances adjusted or replaced with new appliances adjusted by the manufacturer to properly burn a lower-Btu range gas. The processing would remove enough inert CO2 to raise the energy content of the resulting CBM stream so it falls within the overlapping *lower* end of the Utility's earlier-approved heat content range and the *higher* end of the lower heat content range approved by the Commission in May 1998.[26]

[26]In another critical error, Appellants assert that *had* the Utility initiated its program to adjust customers' gas appliances earlier, "it would have avoided imposing the *double burden* of this charge *plus* the added expense of gas processing" thereby "sav[ing] ratepayers millions in processing costs." Appellants' Opening Brief at 27-28, 30, 34, 43. Undisputed testimony in the record of this proceeding makes clear that CBM gas processing would be required as a transitional remedy once the program of adjusting customers' gas appliances began – *no matter when the program began*. [Direct Testimony of Lawrence A. Conti, April 15, 2005, Docket Nos. 04-057-04; 045-057–09; 04-057-11; 04-057-13; and 05-057-01, pp,. 36-37. Record 246.

While the Utility's initial applications to the Commission for rate recovery of CBM processing costs were finally denied by the Commission's August 2004 Order [See Section 2, ***Course of Proceedings,*** above], that same order recognized the need for a "long-term solution to the compatibility of customer appliances with natural gas containing coal-seam gas consistent with the utility's obligation to provide safe commodity and service to its customers,"[27] and stated the Commission would open a docket to further address that need.

In October 2004, the Commission accordingly initiated and chaired a series of six technical conferences for regulatory parties, the Utility, and other interested parties to better understand and craft a long-term solution to the Utility's CBM incompatibility problem. The final technical conference included an in-depth review of three preferred solutions for managing heat content:

1. precision blending with CBM processing as emergency back-up;
2. precision blending with Kern River pipeline gas as emergency back-up; and
3. continued CBM processing with propane injection as emergency back-up.[28]

After this regulatory process was concluded, the Utility decided to continue to manage the heat content of its gas supply by processing the CBM under its existing affiliate contract for processing services rather than resorting to some other remedy option. It applied for rate recovery of the resulting costs in this proceeding.

In subsequent negotiations and settlement between the Utility and the other participating parties, the Utility waived any claim to rate recovery of CBM processing costs incurred prior to

---

[27]Commission's August 2004 Order, p. 50.

[28]The content of the six technical conferences is discussed in detail on pages 17-24

February 1, 2005 in exchange for rate recovery thereafter in accordance with the settlement terms.

SUMMARY OF ARGUMENT

---

of the Commission's January 6, 2006 Order.

The Parties to this proceeding reached a comprehensive settlement that fairly resolves a long-standing and technically complex dispute. Relevant and probative evidence in the record of this proceeding shows that the settlement is in the public interest; is in the interest of Utility ratepayers who are entitled to reasonable, safe and efficient natural gas service;[29] and accords, in every respect, with Utah law that "encourage[s]" settlement by the parties of matters before the Commission."[30]

The Appellants, none of whom chose to participate in the *informing* technical conference process or the eight-month Commission proceeding, seek to undo the outcome of that intensive process and restore the *status quo ante* for reasons that no longer pertain. Such a result would waste state and ratepayer money in a further dispute that litigation has shown itself ill-equipped to finally resolve.

---

[29]Utah Code Ann. §54-3-1 states, in part:

> Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable.

[30]Utah Code Ann. §54-7-1.

The Appellants' ill-conceived objective and arguments disregard the most important question in this proceeding: How do we best protect ratepayers' interests in the face of a changing regional and national natural gas supply? They never address the changes that have occurred, or are foreseen but have yet to occur, in the gas supply available to Utility customers.[31] They never mention the 1998 Commission-approved decision to lower the Btu range of the gas supply the Utility manages for customers to accommodate those known or foreseeable changes. And they never offer any workable alternative to the Utility's decision to accommodate the transition to that lower-Btu range gas supply by continuing to process CBM.

[31] The April 15, 2005 Direct Testimony of Utility witness, Lawrence A. Conti, in the record of this proceeding, pp. 33-36, Record 246, discusses these changes. The only mention Appellants make of these changes is a one-sentence argumentative comment on pages 50-51, and a further short paragraph comment on page 67 of their Opening Brief.

The Appellants' implicit solution to the CBM incompatibility problem is for the Utility to further provide processing at no cost to ratepayers or to find some other remedy. The facts in the record of this proceeding show that neither option would lead to just and reasonable rates[32] and both would encourage further litigation, since the Utility would be denied rate recovery of the remedy shown to be most efficacious and cost efficient in managing the heat content of its gas supply through the transition period.

The Appellants' legal arguments for undoing the parties' settlement in this case are as misplaced as their objective. The case law they cite to support their argument that the Commission's August 2004 Order is dispositive of the issues of prudence and rate recovery in this proceeding make clear that prior Commission Order has no relevance in this proceeding at all. Moreover, the wording of the order limits its application to rate recovery of CBM processing costs for the time period of June 1999 through May 2004.

The Appellants compound their legal error by misreading the wording of Utah Code §54-4-4(4)(a) that identifies the Utility "action" or decision the Commission must consider when determining the prudence of costs sought to be included in rates. That "action" is not the 1998

---

[32]Regarding the meaning of the phrase "just and reasonable rates," this Court, in discussing an earlier reference to a "trust relationship"between a public utility and its customers, stated in *Utah Dept. of Admin. Serv. v. Pub. Serv. Comm'n*, 658 P.2d 601, 618 (Utah 1983):

> That statement [about a trust relationship] . . . is simply an expression of the utility's legal responsibility to make "just and reasonable" charges for its services and to assure that those services are "in all respects adequate, efficient, just and reasonable." U.C.A., 1953, § 54-3-1.

decision to build the CO2 removal plant, as Appellants assert.

That "action" is the Utility's decision to continue CBM processing by means of its affiliate service contract.

The Appellants' claims, that they were denied an adequate opportunity to be heard and that Commission Chairman Campbell was biased and should have recused himself from this proceeding, have no merit. In denying Appellants Ball and Geddes untimely petition to intervene, the Commission effectively determined that Appellants' lack of participation in this proceeding stems not from a lack of proper notice but rather from their failure to become informed and to make their concerns known in a timely fashion. Regarding Chairman Campbell's alleged bias, they have effectively waived that claim by not timely raising it – a claim they in any case have failed to establish.

Finally, the Appellants have failed to demonstrate that they have standing to challenge the Commission's approval of the parties' settlement on appeal. There is presently pending before this Court motions to dismiss the Appellants' consolidated appeals for lack of standing or other authority, and those motions should be granted by this Court.

A R G U M E N T

I. THE APPELLANTS SHOULD NOT BE GRANTED STANDING TO CHALLENGE THE SETTLEMENT THE PARTICIPATING AND INFORMED PARTIES REACHED IN THIS PROCEEDING.

The two principal Appellants in this case, Mr. Ball and Ms. Geddes, petitioned to intervene in this proceeding after it was over, asserting lack of notice, that the Committee and the Division had failed to perform their "statutory duty," and that "the Commission has not heard from any party in this matter who had competently, effectively, thoroughly, professionally or

vigorously represented the potential impact of [Questar Gas'] Application on its customers." They requested that the Commission grant them full discovery rights, the right to submit testimony and cross-examine witnesses, and that the Commission hold another "full evidentiary hearing."[33]

[33]November 17, 2005 Request to Intervene, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01, at 9 and 10-12. Record 336.

The Commission denied Appellants Ball and Geddes intervention petition. It found they had "provid[ed] no explanation for not being aware of these proceedings" despite "[a]ll requirements of the Open and Public Meetings Act [being] met," and further information about the proceeding being provided on the Commission's "publicly accessible website containing notices and orders"and which further "permits a person to request their inclusion on docket specific mailing lists."[34] The Commission concluded:

> The Petitioners' ability or inability to participate in these dockets is of their own making. They give no creditable explanation for why they delayed seeking intervention until after the end of our proceedings, especially when they were aware of, or should have been aware of, Questar's request for recovery of CO2 plant expenses. Questar's specific arguments and evidentiary basis upon which it sought recovery was available for months, without question beginning with the filing of the January 2005 Application and Questar's April 2005 testimony.[35]

The Commission found Petitioners' claim that the Committee and the Division had not properly represented ratepayers and the public interest completely unsubstantiated:

> In summary, while Petitioner's legal interests may be affected by these proceedings (as indeed may the

[34]Commission's January 56, 2006 Order on Request to Intervene, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13; and 05-057-01, at 6-7. Record 1150.

[35]Commission's January 56, 2006 Order on Request to Intervene, at 13.

interests of the other hundreds of thousands of Questar customers), those interests have been vigorously protected by those statutorily charged with the task; namely the Committee, the Division and their respective experts.[36]

[36] *Id*. at 14.

Referring to the requirements of Utah Code Ann §63-46-9, that permits interested third party intervention in an administrative adjudicatory proceeding where its is shown that:

> the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention,[37]

the Commission concluded:

[37]Utah Code Ann. §63-46b-9(2)(b) (2001).

> [i]n view of the substantial efforts and expenditures of time and money incurred by all of the parties in this case, reopening this case at this late date to provide additional time permitting Petitioners to go on a fishing expedition. . .is contrary to public policy which encourages resolution by negotiated stipulation. . . .There has been extensive investigation of why it may be or why it may not be appropriate and prudent to utilize the CO2 plant for circumstances as they now are or are expected to be for Questar and its customers. . . . Appropriate notices for all of the Commission's technical conferences and docket proceedings have been given; the Commission has complied with the requirements of Utah law. . . . The Commission has conducted an evidentiary hearing to receive evidence to resolve the matter. Other public witnesses were aware of that hearing's scheduling and the time set for it; they appeared and provided their statements to the Commission. Petitioners have been provided the opportunity to submit written statements, they have submitted them and they have been considered by the Commission. . . . We are unpersuaded by Petitioners' arguments that their intervention at this stage is necessary, can be done without violating Utah Code §63-46b-9's touchstones regarding impairment of the interests of justice and the orderly and prompt conduct of proceedings, nor without setting a debilitating intervention precedent. . . Wherefore, it is hereby ORDERED that Roger Ball's and Clair Geddess' Petition to Intervene is denied.[38]

If Ball's and Geddes' participation was untimely and impairing of the interests of justice prior to appeal, neither they nor the other 53 Appellants have provided any new evidence or compelling reason that would allow one to conclude that Appellants' participation at this even later stage in the proceeding would be any more salutary, any less impairing of the interests of justice, or any less of a "debilitating. . . precedent."[39]

There is pending before this Court a May 2, 2006 Motion to Dismiss that was filed by the Utility in response to the Appellants' March 27, 2006 Petition for Review. In a June 5, 2006

[38] *Id.* at 14-15.

[39] *Id.* at 15.

Order, this Court deferred ruling on that motion, stating it would consider the matter upon full briefing and oral argument. The Committee supports and adopts the argument and conclusions in the Utility's pending motion and urges the Court to grant the motion and dismiss this appeal.

II. NEITHER THE COMMISSION'S AUGUST 2004 ORDER NOR THE FACTUAL CIRCUMSTANCES THAT ORDER IS BASED ON GOVERN THE DETERMINATION OF PRUDENCE OR RATE RECOVERY IN THIS PROCEEDING.

The lack of merit in Appellants' appeal does not rest solely with their failure to timely participate in the Commission proceeding or their lack of standing to appeal the outcome of that proceeding to this Court. Even if they had participated in the proceeding and even if they had standing to appeal, the arguments in their Opening Brief for why this Court should undo the settlement the parties reached in this case are legally flawed and without merit.

D. The Wording and Intent of the Commission's August 2004 Order Limits its Application to the CBM Processing Costs at Issue in that Case.

Much of the Appellants' argument in this appeal is based on a lack of understanding of the record and Commission findings in earlier proceedings. For example, their Opening Brief asserts that the Commission's August 2004 Order resolves the issue of rate recovery of CBM processing expenses in this proceeding, yet the order's wording limits its application to the record facts and costs at issue in that case:

> For the reasons set forth above, we conclude that Questar Gas has not met the burden of proving its actions constituted a prudent response to the introduction of lower Btu coal-seam gas into the Questar Gas distribution system. . .We therefore reject the CO2 Stipulation and deny recovery of the processing costs during the

period from June 1999 to May 2004.[40]

The Commission further emphasizes the order's limited applicability in a response it made to a Utility request for clarification of that very point:

[40]Commission's August 2004 Order, p. 49.

> The [August 2004 Order] addressed only Questar's failure to substantiate approval of the CO2 Stipulation in these proceedings and our necessary rejection of the Stipulation, which would have permitted recovery of some processing costs through May of 2004. Our reference to the May 2004 end date was dictated by the Stipulation's terms and was not intended to have any other preclusive effect on recovery by Questar. *In regards to Questar's request for clarification and reconsideration, we state that our Order does not preclude Questar from seeking recovery of CO2 processing costs in other dockets.*[41]

The factual and time limitations to the Commission's August 2004 Order are not surprising. It draws upon a factual record that had already been closed four years earlier, and by the time it was issued the circumstances regarding CBM's presence in the utilities distribution system were changing.

The Commission calls attention to these changes and their import in its unambiguous notice at the end of the August 2004 Order. After stating it would determine the disposition of monies already collected in rates for CBM processing during June 1999 through May 2004 in a separate proceeding, the Commission concluded:

> We will also address, in a separate docket, how to craft a long-term solution to the compatibility of customer appliances with natural gas containing coal-seam gas consistent with the utility's obligation to provide safe commodity and service to its

[41]Commission's October 20, 2004 Order on Request for Reconsideration and Clarification, Docket Nos. 98-057-12; 99-057-20, 01-057-14 and 03-057-05, p. 4 (emphasis added). On page 48 of their Opening Brief, Appellants attempt to minimize the Commission's clarification by arguing the Commission simply "declined to pre-judge issues or to give an advisory opinion of matters not before it." Nevertheless, had the Commission intended that its order be binding in other proceedings, its clarification, that the order "was not intended to have any other preclusive effect on recovery by Questar," is obviously inaccurate and misleading. A much more reasonable interpretation of the clarification is the Order was *intended* to only apply to the facts and costs at issue in that proceeding.

customers.[42]

The proceedings referred to in this notice were the six technical conferences the Commission chaired that, in turn, led to this proceeding.

Putting Appellants' *res judicata* claims aside for the moment, a simple reading of the August 2004 Order demonstrates the error in their argument. The August 2004 Order does not govern in this proceeding because it was never intended to govern, and its wording so states.

B. *The Commission's August 2004 Order Has no Res Judicata or Precedential Application in this Case.*

Even if the wording of the Commission's August 2004 Order did not preclude its application in this instance, the case law the Appellants cite to support their *res judicata* argument clearly does. That case law distinguishes rate case proceedings such as this one from the usual application of that doctrine of repose and further states that differing factual circumstances, such as those that distinguish this proceeding, preclude the application of the August 2004 Order to the rate recovery issues in this case.

The Commission's January 6, 2006 Order properly recognized the changed circumstances in the record of this proceeding and concluded:

[42]Commission's August 2004 Order, p. 50.

In considering the prudence of Questar Gas's decision to use the CO2 Removal Plant to manage the heat content of its gas supplies since February 1, 2005, we must consider the facts and conditions as they existed at that time. Our prior finding that the Company failed to demonstrate prudence in its decision to contract for construction and operation of the CO2 Removal Plant during the 1997 and 1998 time frame is relevant only to the extent the same conditions present in 1997 and 1998 continue to be present. *Based on the evidence presented in these dockets, it is apparent these conditions have changed* [emphasis added].[43]

[43]Commission's January 6, 2006 Order, p. 33 (emphasis added).

The Commission goes on to recount how the record circumstances in this case markedly differ from those in the record of the earlier proceedings: (1) There was a "lack of documentation" of the Utility's decision-making process in the earlier proceedings;[44] however, in this case the Utility "conducted a transparent decision-making process" that "employed reasonable methods and criteria in evaluating alternatives, and adequately recorded and documented its evaluation" and "carefully considered potential conflicts between affiliates and placed the interests of its customers before those of its affiliates."[45] (2) In the earlier proceedings the Commission determined the presence of CBM gas "could have been the result of Questar Pipeline taking advantage of a business opportunity to transport that gas," and the Utility "analysis of possible solutions appeared to be influenced by affiliate considerations;"[46] however, in this case Utility "customers have benefitted from the shipment of coal bed methane by Questar Pipeline," and "[t]he amount of coal bed methane on the interstate pipeline system is increasing and represents an increasingly important source of gas to meet growing customer demands as traditional gas supplies decline."[47] (3) In the earlier proceeding the Commission was "troubled by the fact that the contract for operation of the CO2 Removal Plant was given to an unregulated affiliate of

[44]*Id.* at 33.

[45]*Id.* at 37. Record Documents 104 through 213 illustrate the "transparent" process the Commission refers to.

[46]*Id.* at 33.

[47]Id. at 34. *See*, April 15, 2005 Direct Testimony of Robert A. Lamarre, Record 279, at 12-28, on CBM as a vital gas supply resource; and April 15 Direct Testimony of Alan J. Walker, Record 283, at 4 and 10-23, on financial savings that have accrued to Utility ratepayers as a result of the availability of CBM.

Questar Gas;[48] however, in this case

> the record also establishes that having the CO2 Removal Plant owned and operated by Questar Transportation does not result in any prejudice to Questar Gas or its customers [since] the costs incurred by Questar Gas are the same as if the plant were owned and operated by Questar Gas.[49]

(4) In the earlier proceeding the Commission concluded the Utility "should have anticipated the safety issue earlier than it did, which may have allowed more time to "address the issue and pursue other alternatives, such as . . . action by Questar Gas at the FERC;"[50] however, in this case

[48] *Id.* at 33.

[49] *Id.* at 34. *See,* April 15, 2005 Direct Testimony of Barrie L. McKay, Record 234, at 27-28, stating, in part: "a prudent utility would attempt to negotiate a contract with its affiliate that costs no more than it could provide the service itself. Questar Gas has done so. Given this, it would be of no benefit for Questar Gas to pursue ownership of the plant."

[50] *Id.* at 33.

> [n]o Party believes it would be reasonable to pursue actions at the FERC to attempt to keep coal bed methane off of Questar Pipeline. Indeed, it appears that pursuing such actions would be detrimental to Questar Gas customers. Therefore, the fact that Questar Gas did not pursue these potential actions prior to 1999, which gave rise to concerns about affiliate conflicts in prior proceedings, does not give rise to the same concerns in the current context.[51]

The Appellants rely on the Utah case of *Salt Lake Citizens v. Mountain States Telephone*, 846 P.2d 1245, 1252-53 (Utah 1992) for their *res judicata* argument, but that case actually supports the Commission's conclusion that its August 2004 Order does not govern the issues of prudence and rate recovery in this case. This Court observed in *Salt Lake Citizens* that *res judicata*

> has only limited applicability to agency proceedings, such as rate cases where the predominant issue is what constitutes a just and reasonable rate for a future period. What constitutes a just and reasonable rate of return, the cost of capital, and the various expenses and revenue amounts cannot be decided on the basis of a prior rate proceeding but must be determined anew in each rate case.[52]

This Court then identifies the circumstances where *res judicata* may apply, which only further

---

[51]*Id.* at 35. *See*, April 15, 2005 Direct Testimony of Alan J. Walker, Record 283, at 24-25, stating, in part, that "any effort to keep CBM off of Questar Pipeline would have been ill-advised because it would have resulted in proceedings at FERC where other shippers would have attempted to keep [Utility]-owned gas off of Questar Pipeline unless it was processed to remove hydrocarbon liquids."

[52]*Salt Lake Citizens*, 846 P.2d at 1251 (citation omitted).

demonstrates the inapplicability of that legal doctrine in this instance:

> Res judicata applies when there has been a prior adjudication of a factual issue and an application of a rule of law to those facts. In other words, res judicata bars a second adjudication of the same facts under the same rule of law.[53]

Were this proceeding about the prudence and rate recovery of the Utility's June 1999 through May 2004 CBM gas processing costs that were at issue in the August 2004 Order, the Appellants' claim of *res judicata* would be relevant. Since, however, this proceeding is about different costs, incurred as a result of a different decision and under different circumstances, *Salt Lake Citizens* makes clear the Commission's August 2004 Order has no *res judicata* application to the present controversy at all.

[53] *Id.* at 1251-52.

Salt Lake Citizens further shows that the Commission's August 2004 Order is also not controlling of the issues of prudence and rate recovery in this case under established rules of case precedent. Noting that case precedent or *stare decisis* also "has limited applicability to administrative agency cases,"[54] this Court states that "[r]ules of law developed in the context of adjudication are as binding as those promulgated by agency rule making," but

> [t]hat does not mean, however, that a rule of law established in adjudication can never be changed by the agency that established it. *Administrative agencies must, and do, have the power to overrule a prior decision when there is a reasonable basis for doing so.* As this Court stated in *Reaveley v. Public Service Commission*, 20 Utah 2d 237, 242, 436 P.2d 797, 800 (1968), "Certainly an administrative agency which has a duty to protect the public interest ought not be precluded from improving its collective mind should it find that a prior decision is not now in accordance with its present idea of what the public interest requires."[55]

[54] *Id.* at 1252.

[55] *Id.* at 1253 (emphasis added).

In other words, *even if* the Commission's August 2004 Order indicated it was applicable to other proceedings (which, as discussed above, it does not), the Commission has the power to overrule that order "where there is a reasonable basis for doing so."[56] The Commission's January 6, 2006 Order detailed the substantial factual changes that have occurred since its August 2004 Order and why those changed circumstances make the August 2004 Order no longer applicable to the issues in this case. As this Court in the instant case explains, those enumerated changed conditions would also constitute a reasonable basis for "overruling" the application of its August 2004 Order were there any reason to conclude that order was intended to govern this rate proceedings. Either way, it should be clear that the August 2004 Order is not determinative of the issues of prudence or rate recovery in this case.

In summary, the Commission's August 2004 Order does not determine the outcome of the issues of prudence and rate recovery in this proceeding either under the doctrine of *res judicata* or under case precedential rules.

C. The Commission Properly Judged the Prudence of the Costs at Issue in this Proceeding by Considering the Utility Action that Led to those Costs in Light of the Circumstances that Existed at the Time the Action was Taken.

The Appellants argue that even if their *res judicata* argument is not valid the prudence of the CBM processing costs at issue in this proceeding must nevertheless be determined by reference to the circumstances in the record that the Commission's August 2004 Order is based

[56]Utah Code Ann. §54-7-13 gives the Commission the express power to: "at any time, upon notice to the public utility affected and after opportunity to be heard, rescind, alter, or amend any order or decision made by it."

on.

Their argument raises the logical quandary of how the law could require application of past differing facts to a subsequent case when the doctrine of *res judicata* makes those past differing facts and the decision based on those facts inapplicable. The law resolves the quandary by affirming the correctness of the Commission's prudence determination.

The procedure the Commission is to follow in making a prudence determination, and the circumstances it is to consider, are codified in the Utah law the Appellants cite but misapply. Utah Code Ann. §54-4-4(4)(a) (2001) provides:

> If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility, or an expense incurred by a public utility, the commission shall apply the following standards in making its prudence determination:
>
> (i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;
>
> (ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;
>
> (iii) determine whether a reasonable utility, knowing what the utility knew or reasonably should have known, at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and
>
> (iv) apply other factors determined by the commission to be relevant, consistent with the standards specified

in this section.

The Appellants argue this statutory wording requires that the Commission determine the prudence of the CBM processing costs at issue by considering the circumstances back in 1998, or earlier, when the CO2 removal plant was constructed. For them, the prudence issue is whether the decision to build the processing plant and its ensuing cost were reasonable.[57]

The problem with the Appellants' argument is the Utility is not asking for rate recovery of the costs to construct the CO2 removal plant, and never has. It does not even own the plant: Questar Transportation Services owns and operates the plant. If the utility owned it, it would not merely be seeking recovery of plant processing costs; it would be seeking approval to include the capital cost of the plant in rate base upon which it would then be entitled to earn a return on

[57]The Appellants' Opening Brief states on page 54: "Questar Gas had a full and fair opportunity to show prudence in connection with the Plant construction in hearings before the Commission from 1998 to 2004." On page 60 it states: "Questar Gas and the Division (now joined by the Committee) again seek recovery of a portion of the costs associated with the CO2 Plant."On page 63 it states: "The Commission's faulty justification for endorsing gas processing costs for the period after January 31, 2005 – even though the Plant construction in 1998 which gave rise to these costs was deemed imprudent and even illegal by a formal adjudication in August of 2004 – is illustrated by the following hypothetical. . ." On page 66 it states: [t]he decision under review in this case was Questar's determination to build the Plant in its affiliate, Questar Transportation."

investment.

If the Commission, as per the statutory wording, is to "focus on the reasonableness of the expense resulting from the action of the public utility," the expense must be the CBM processing services expense. And, since the only CBM processing services expense under consideration for rate recovery in this proceeding is CBM processing services expense incurred on or after February 1, 2005,[58] the essential task becomes one of identifying the Utility "action" that

---

[58]Paragraph 9 of the settlement provides:

> The Parties agree that Questar Gas should be granted cost recovery as provided below:
>
> (a) Past Costs. If this Stipulation is approved in a final order and Questar Gas actually receives the recovery contemplated in paragraph 9(c), Questar Gas will not seek recovery of approximately $15 million of past gas management costs incurred from January 1, 2003 through January 31, 2005.

"result[ed]" in that particular "expense."

This is precisely the task the Commission went through in its prudence evaluation. It stated in its January 6, 2006 Order:

> We need not assess the prudence of the Company's actions prior to February 1, 2005 since, pursuant to the Stipulation, the Company has agreed to forego request of any cost recovery prior to this date.[59]

It then identified the Utility decision-making process that resulted in the post-January 31, 2005 CBM processing expense in the following finding:

> The Company conducted a transparent decision-making process open to the public and subject to scrutiny by any interested person. Throughout the technical conference process, Questar Gas repeatedly sought input from other parties on how to best address the issues presented by the presence of coal bed methane going forward. No participant challenged the conclusions Questar Gas presented as being prudent and in the best interests of customers, and no participant suggested any alternative as more preferable.

> (b) Cost Recovery beginning February 1, 2005. Rate recovery shall be allowed for costs incurred after January 31, 2005, pursuant to the terms of this Stipulation. . . .
>
> October 7, 2005 Gas Management Cost Stipulation, docket Nos. 04-057-04; 04-057-09; 04-07-11; 04-057-13 and 05-057-01, Record 322.

[59]Commission's January 6, 2005 Order, p. 28, Footnote 13.

> Questar Gas clearly identified its objective to address the safety issue posed by the presence of coal bed methane on its system. The Company identified alternatives to meet this objective, employed reasonable methods and criteria in evaluating the alternatives, and adequately recorded and documented its evaluation. The company carefully considered potential conflicts between affiliates and placed the interests of its customers before those of its affiliates. This process satisfies the concerns outlined in our 2004 Order. We therefore conclude that a reasonable, unaffiliated utility, knowing what Questar Gas knew or reasonably should have known, could reasonably have acted the way Questar Gas has acted in choosing to use the CO2 Removal Plant since February 2005 and thereafter.[60]

In contrast to this Commission finding, further amplified by seven pages describing the structure and content of the "transparent" decision-making process in the Background section of its Order, and a further three pages in the Discussion, Findings and Conclusion section of its Order,[61] the Appellants devote but six lines of disparaging

comment in a100-page brief to that process. Reflecting more than anything else their absence from the process, they assert:

[60]Commission's January 6, 2006 Order, pp. 37-38.

[61]Commission's January 6, 2006 Order, pp. 17-24 and pp. 35-38.

> These technical conferences were used by the Utility to instruct, not only on the issues of appliance adjustment, but also on considerations of "prudence" in connection with ongoing costs for gas processing.[62]

Beyond this unsubstantiated observation, the Appellants never address the Commission's reasoning and findings regarding the substance and accomplishments of the technical conference process.

The Appellants' misapplication of the statutory wording of Section 54-4-4(4)(a) is flawed for reasons other than their failure to correctly identify the Utility action or decision to be evaluated. A fundamental requirement that must be met in any rate making proceeding is a "just and reasonable rates" result.[63] This requirement is, in fact, expressly stated in the statutory wording. In subsection 54-4-4(4)(a), just prior to the wording the Appellants focus on, it states:

> (a). . . the Commission shall apply the following standards in making its prudence determination:
>
> > (i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state; . . . .

The Appellants' misapplication of the wording in sub-section (ii), that identifies the proper Utility "action," would result in unjust and unreasonable rates because it would either disallow rate recovery of reasonably-incurred Utility operating costs or it would force the Utility

---

[62]Appellants' Opening Brief, pp. 49-50.

[63]Utah Code Ann. §54-3-1 states: "All charges made, demanded or received by any public utility. . . shall be just and reasonable."

to pursue less sure and more costly remedies that, if allowed into rates, would, by definition, not result in just and reasonable rates.

D. ***Neither Utah Code Section 54-4-26 nor the 1994 Planning Standards Proscribe Rate Recovery of CBM Gas Processing Costs Incurred after February 1, 2005.***

The Appellants further argue in their Opening Brief that a combination of the wording of Section 54-4-26 and provisions in the 1994 Final Standards and Guidelines for Integrated Resource Planning for the Utility ("IRP Standards and Guidelines") proscribe any rate recovery of CBM processing costs.

Section 54-4-26 provides, with emphasis added:

> Every public utility, *when ordered by the commission* shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures, submit such proposed contract purchase or other expenditure to the commission for its approval; and, if the commission finds that any such proposed contract, purchase or other expenditure diverts, directly or indirectly, the funds of such public utility to any of the officers or stockholders or to any corporation in which they are interested, or is not proposed in good faith for the economic benefit of such public utility, the commission shall withhold its approval of such contract, purchase or other expenditure, and may order other contracts, purchases or expenditures in lieu thereof for the legitimate purposes and economic welfare of such public utility.

While this statutory wording provides the Commission *discretionary* authority to pre-approve Utility expenditures, the Appellants argue that a statement the Commission made in the IRP Standards and Guidelines convert the *discretionary* wording of the statute into *mandatory* wording that obligates the Commission to pre-approve all Utility affiliate contracts and expenditures.

Before turning to the IRP Standards and Guidelines statement the Appellants rely upon, one might well question why the Commission would want to restrict its function in such a manner. The statutory wording already empowers it to require pre-approval when deemed necessary or appropriate. Why would it require itself to become immersed in the minutiae of reviewing and pre-approving *all* Utility affiliate transactions? Beyond the burden, such a requirement would put the Commission in the business of managing the operations of the Utility, which is a contrary to regulatory law principles.[64]

Fortunately, the Commission comment the Appellants rely upon neither implies nor requires such a result. It states:

> Affiliate relations remain a concern of this Commission. We do not presume that affiliate transactions are biased and not in the customers' best interests. However, the Commission puts the Company on notice that with regard to cost recovery of [the Utility's] expenditures, we will view [the Utility's] customers' interests as primary. Such interests shall not be subordinated to those of corporate affiliates. All planning options that potentially benefit [the Utility's] ratepayers shall be investigated, whether or not they benefit subsidiaries of the Questar Corporation [IRP Standards and Guidelines, pp.3-4].

[64]*See, Missouri ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 262 U.S. 276, 289 (1923), that "[t]he Commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation. . . ." *See also, Utah Dept. of Admin. Serv. v. Pub. Serv. Comm'n*, 658 P.2d 601, 618 (Utah 1983), that "the Commission is normally forbidden from intruding into the management of a utility,"citing *Logan City v. Public Util. Comm'n*, 296 P. 1006, 1008 (Utah 1931).

Without in any way minimizing the importance of the regulatory concern with affiliate transactions, this Commission comment does not state – as the Appellants assert – that "all affiliate transactions" or contracts will be investigated. Instead, it states "[a]ll planning options that potentially benefit [the Utility's] ratepayers shall be investigated, whether or not they benefit subsidiaries of the Questar Corporation."

The Commission here is talking about the Utility's IRP, which is long-range business planning that was not implemented merely to address "the development of conflicts of interest among the Questar constellation of corporate entities."[65] The Commission implemented IRP for Utah's major electric utility at the same time,[66] and the purpose for such planning is

[65]Appellants' Opening Brief, at 22.

[66]Commission's December 16, 1991 Order on Draft Standards and Guidelines for IRP, Docket No. 91-057-09, p. 3.

> to insure that the Company's present and future customers are provided natural gas energy services at the lowest cost consistent with safe and reliable service, and the fiscal requirements of a financially healthy utility and the long-run public interest. To this end, the Commission desires a regulatory environment that encourages [the Utility] to actively pursue its IRP as part of the Company's business strategy.[67]

In summary, there is nothing in the wording of Section 54-4-26 that requires Commission pre-approval of the Utility's affiliate contract for CBM gas processing services. Moreover, there is nothing in the Commission's IRP Standards and Guidelines statement that would convert the discretionary pre-approval wording of the statute into a mandatory pre-approval requirement.[68]

III. THE PARTIES' SETTLEMENT IS JUST AND REASONABLE AND SHOULD BE UPHELD UNDER UTAH LAW THAT ENCOURAGES

[67] *Id.* at1-2.

[68] A final observation: the Utility's affiliate contract for CBM processing services *was* submitted to the Commission for approval in connection with the Utility's original 1998 application for rate recovery of CBM gas processing expenses (Docket No. 98-057-12). While never formally approved or dis-approved, the contract was made a part of the record that ultimately culminated in the Commission's August 2004 Order denying rate recovery of CBM gas processing expenses. A perusal of that record will reveal the contract was the subject of considerable review by the Commission and regulatory parties in those earlier proceedings.

SETTLEMENT OF MATTERS IN DISPUTE BEFORE THE COMMISSION.

D. *The Settlement Represents a Reasonable Compromise of Comflicting Party Positions regarding Complex Historical and Technical Issues.*

The settlement of a complex dispute usually requires a willingness by the parties to compromise positions in exchange for the greater benefit of a certain and sure end to the litigation. The more complex the legal or technical issue, generally the more costly and time-consuming the litigation and, generally, the more uncertain the ultimate outcome. The law, for these reasons, generally favors settlements. Utah law has codified that preference with regard to disputes that come before the Commission. Utah Code Ann. §54-7-1(1) provides:

> Informal resolution, by agreement of the parties, of matters before the commission is encouraged as a means to:
>
> (a) resolve disputes while minimizing the time and expense that is expended by:
>
> (i) public utilities
> (ii) the state; and
> (iii) consumers;
>
> (b) enhance administrative efficiency; or
>
> (c) Enhance the regulatory process by allowing the commission to concentrate on those issues that adverse parties cannot otherwise resolve.

The parties were able to settle this case by allowing the Utility a mutually-agreeable level of rate recovery for CBM processing costs without expressly delineating when or how alleged

past Utility prudence or imprudence occurred or ceased in a historical time line that saw CBM grow and change from an unwanted nuisance into a valuable natural gas resource. This is not to say, however, that regulatory concern about the relationship between the Utility and its Questar affiliates was neglected or is not reflected in the settlement terms. Appellants' assertions that regulatory parties abandoned their affiliate interest concerns in settling is no more accurate than the reverse assertion would be that the Utility abandoned its interest in rate recovery by settling.

The parties' settlement affirms the $29 million the Utility lost in earlier proceedings for its failure to demonstrate its CBM processing remedy was not unduly influenced by affiliate interests. In addition, it assesses a further $7 million loss for that failure by allowing rate recovery of CBM processing costs to not begin prior to February 1, 2005.

In summary, the settlement at issue underscores regulatory parties' affiliate concerns by the further loss of rate recovery that is embodied in the settlement. At the same time, however, the settlement accommodates the reality that CBM gas is now a valuable customer resource and, therefore, the Utility should, at some point, be allowed to recover costs it reasonably incurs in securing and making that resource available to ratepayers.

Give the prior history of this dispute, there is no credible reason to think further litigation would achieve a more just and reasonable result for either side than what has been achieved in the parties' settlement. The settlement, therefore, exemplifies the benefits and fulfills the purposes set out in Utah Code Ann. §54-7-1(1), and for that reason should be affirmed by this Court.

E. *The Record in this Proceeding Supports the Commission's Determination that the Costs at Issue Were Prudently Incurred*

and Result in Just and Resonable Rates.

The statutory law cited above that encourages the settlement of disputes before the Commission provides that the Commission may "adopt" a settlement if:

> (A) the commission finds that the settlement proposal is just and reasonable in result; and
> (B) the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result.[69]

In other words, the standard the Commission must use in considering the adoption of a settlement is no different than the standard it otherwise uses in setting rates: the result and/or the rate must be "just and reasonable."[70]

The Commission's January 6, 2006 Order approving the settlement concludes that "the rates resulting from the Stipulation are just and reasonable and that approval of the Stipulation is in the public interest."[71] This ultimate determination is based upon several secondary findings that have already been identified and discussed *supra*, at 24-25. The

---

[69]Utah Code Ann. §54-7-1(3)(d)(i) (2001).

[70]Utah Code §54-3-1 provides, in part: "[a]ll charges made demanded or received by any public utility. . . shall be just and reasonable." Utah Code §54-4-4 provides, in part, that if, after hearing, the Commission finds a rate unjust, unreasonable, discriminatory, preferential, insufficient or otherwise in violation of any provisions of law, "the commission shall determine the just, reasonable, or sufficient rate. . ."

[71]Commission's January 6, 2006 Order, p. 40.

Appellants Opening Brief makes no attempt whatever to address these Commission factual findings or their support in the record of this proceeding.

In summary, the Commission concluded:

> Based on the findings of fact in the foregoing sections of this Order, we conclude that Questar Gas' use of the CO2 Removal Plant from and after February 1, 2005 to manage the heat content of its gas supplies is prudent and that the partial recovery of costs provided in the Stipulation is reasonable and in the public interest.[72]

The Appellants have not provided any credible evidence or argument to dispute the Commission's conclusion.

F. *The Commission Followed the Requirements of Utah Code §54-7-1 in Approving the Settlement at Issue.*

The Appellants attack the Commission's approval of the settlement by asserting the Commission "did not consider the significant and material facts related to the case" as required by Utah Code Ann. §54-7-1(3)(d)(ii). Allegedly, the Commission did not consider the earlier factual record when considering the advisability of the settlement and, allegedly the only evidence it could have considered in the present record was "hearsay."[73] This latter assertion is so general and unsubstantiated it deserves little response.

---

[72]Commission's January 6, 2006 Order, p.38.

[73]Appellants' Opening Brief, p. 79.

Other than the documentary information developed at the six technical conferences which the Commission took administrative notice of, the evidence in the record is either witness testimony that regulatory parties and their expert consultants probed and evaluated through discovery, or sworn testimony of party witnesses given at the hearing in support of the settlement. That the Appellants were not parties to this proceeding and did not provide testimony does not make the evidence in the record hearsay or of no probative value. If that were the case, settlements before trial or hearing by disputing parties would never have evidentiary support. Moreover, if regulatory parties and public utilities always had to go through the expense of a contested trial or adjudicative hearing before they could settle a dispute, much of the incentive and benefit to be gained from settling would be lost.[74]

The Appellants' assertion about the lack of proper evidence in the record repeats a claim that Appellants Ball and Geddes made in written public witness statements filed with the Commission after the hearing. The Commission answered that claim, stating:

> While we take [administrative] notice [of the materials developed during the technical conferences], we base our findings and conclusions contained herein upon a thorough examination of the entire evidentiary record in these dockets and conclude that, absent any reliance on the noticed material, the overwhelming weight of evidence admitted in these proceedings, including testimony on the Stipulation, pre-filed testimony, and the facts asserted in the application, support both our conclusion that Questar Gas has acted prudently in evaluating and choosing among the available

[74]Utah Code Ann. §54-7-1(3)(a) expressly provides:

> At any time before or during an adjudicative proceeding before the Commission, the parties, between themselves or with the commission or a commissioner, may engage in settlement conferences and negotiations.

alternatives and our approval of the Stipulation.[75]

The Appellants attempt to dismiss this evidence in the record with the legally erroneous appellation of "hearsay" falls far short of any credible refutation; and their further disregard of the Commission's answer to that 'no credible evidence' charge in its January 6, 2005 Order is not helpful either. In any case, their argument that the Commission did not comply with the requirements of the settlement statute is groundless.

G. Appellants' Assertions that the Commission Violated the Requirements of Fair Notice and Due Process Are Untimely and Without Merit.

The Appellants assert that they were given inadequate opportunity to be heard. They do so despite the clear and unambiguous notice at the end of the Commission's August 2004 Order that it would pursue in a separate docket "a long-term solution" to the CBM problem, despite four months of technical conferences that were properly noticed to the public, and despite eight months of properly-noticed Commission proceedings.

[75]Commission's January 6, 2006 Order, p. 32, footnote 18.

Nowhere, however, do the Appellants respond to the Commission's determination, in its January 6, 2006 Order on Request to Intervene, that Appellants Ball and Geddes have only themselves to blame.[76] While the Commission was addressing Appellants Ball and Geddes' petition do intervene, its conclusion applies equally well to the other Appellants.

Instead of refuting the Commission's conclusion, the Appellants just add more unsubstantiated smoke. They argue that the Commission's order was unclear with respect to whether the settlement process was in the public interest in this case. They also assert: the Commission's docketing system is a "shambles" and its website "confusing;" the

[76]Commission's January 6, 2006 Order on Request to Intervene, Docket Nos. 04-057-04; 04-057-09; 04-057-11; 04-057-13 and 05-057-01, p. 13.

Commission opened too many dockets; and the Committee suddenly changed its long-held position of opposition to any rate recovery.[77]

None of these assertions have any merit. The regulatory effort to find a just and reasonable solution to the CBM incompatibility problem that has occurred *since* the August 2004 Commission Order has simply been too long, too extensive, too well noticed by the media and by Commission notices of proceedings for the Appellants' assertions to carry any credibility. At some point the issue becomes one of lack of diligence and proper care and not lack of opportunity to be heard. In this case the Appellants moved beyond that point months prior to the hearing on the settlement. If the process missed something because they were not "heard," they have only themselves to blame.

Amidst the smoke of Appellants' due process assertions, they also claim that the Committee unexpectedly

> "reversed its position, formerly refusing to give any quarter on the recovery of costs for processing of gas, now agreeing to fold the tent and withdraw from the field.[78]

Appellants' jousting metaphor is apt for how they apparently view the Committee's statutory duty: one stakes out a position with grunts and postures and subsequently emerges victorious or goes down valiantly fighting. The metaphor is very inapt, however, where the field of battle is the court or hearing room and the weapon is *evidence*.

The Utility in this proceeding established a very complete and persuasive *prima facie*

---

[77]Appellants' Opening Brief, pp. 86-93.

[78]Appellants' Opening Brief, p. 90. See also similar claim at p. 51.

case. Appellant Ball was well aware of that fact before his departure as Committee Director. When the Committee retained expert consultants after his departure to analyze the Utility's case and provide evidentiary "weapons," those expert consultants confirmed the strength of the Utility's case; that changed circumstances had not only weakened the Committee's earlier arguments for denying rate recovery of CBM processing costs, but had substantially strengthened the Utility's entitlement claim to rate recovery.

That the parties ended up in negotiations in light of the evidence already in the record prior to Appellant Ball's departure as Committee Director should surprise no one – lest of all Appellants Ball and Geddes. The Committee had already authorized exploratory discussions with the Utility while Appellant Ball was still its Director. In summary, the Committee's reversal of position was neither sudden or capricious, and should not have been unexpected to persons acquainted with Utility regulation.

As a final matter, the Appellants want the year-long regulatory process and Commission proceeding reversed and/or repeated because now, after the process has been completed, they consider Commission Chairman Campbell was biased and should have recused himself from the process.[79]

As with their entire case, the Appellants are untimely with this claim as well. In this instance, that untimeliness is fatal. They only raise the claim now because the proceeding apparently turned out differently than they thought it would.

[79]Appellants' Opening Brief, at 94-95.

To ensure due process to all parties, and to eliminate the unfair possibility of someone simply lying in wait to see how a proceeding ends to raise the trump card of bias on the part of the judge or hearing officer, the law requires that claims of bias "be raised as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist."[80] In that regard, this Court has stated:

> While a motion to disqualify a judge should not be undertaken lightly, it must be made promptly. A party who has a reasonable basis for moving to disqualify a judge may not delay in the hope of first obtaining a favorable ruling and then complain only if the result is unfavorable. Not only is such a tactic unfair, but it may evidence a belief that the judge is not in fact biased. Furthermore, delay imposes unnecessary disruption on both the judicial system and litigants. A disqualification proceeding is a collateral attack on the substantive claim, it disrupts orderly litigation, and it necessarily results in significant additional costs to the parties. Accordingly, a party must move with dispatch once a basis for disqualification is discovered.[81]

Even if the Appellants' claim of bias had been timely raised, they have not established bias on the part of Commission Chairman Campbell. The Chairman recused himself from the earlier proceeding because he participated in developing the Division's case and position before the Commission in that earlier proceeding. The Appellants have shown no such conflict in this

---

[80]*Marcus v. Director, Office of Workers' Compensation Programs*, 548 F.2d 1044, 1051 (D.C. Cir. 1976), as cited in *Pharaon v. Board of Governors of the Federal Reserve System*, 135 F.3rd 148, 155 (U.S. App. D.C. 1998).

[81]*Madsen v. Prudential Federal Savings and Loan Association,*, 767 P.2d 538, 542 (Utah 1988).

proceeding. If the basis of their claim is Chairman Campbell is experienced and has expertise in dealing with the CBM issue, that is considered an asset and not an unfair bias in administrative law generally and regulatory law specifically where the issues often revolve around extremely technical matters requiring expertise to appreciate and resolve. Indeed, were prior experience with the subject matter grounds for disqualification, utility law disputes would rarely be heard and decided by qualified commissioners.

This distinction is clearly drawn in a 1998 U.S. Court of Appeals case involving the Federal Reserve System Board of Governors. In that case the petitioner raised charges of bias against the administrative law judge hearing his case, claiming the ALJ showed a record of ruling in favor of the Board of Governors in other proceedings as well as allegedly incorrect prior rulings against the petitioner. The federal appeals court rejected the claims, stating such evidence "falls far short of demonstrating that the ALJ had 'a fixed opinion-a closed mind on the merits of the case.'"[82]

C O N C L U S I O N

Appellants' Appeal should be dismissed for want of standing. But, even if the Appellants' appearance before this Court were legally proper, their claim for relief is without merit. It ignores the changed circumstances that have occurred since the closing of the record underlying the Commission's August 2004 Order which are documented in the record of this proceeding. It disregards the substantial savings regulatory parties were able to secure in the settlement at issue. And, Appellants' objective of returning to the *status quo ante* is unrealistic,

[82] *Pharaon v. Board of Governors of the Federal Reserve System*, 135 F.3d 148, 155 (U.S. App. D.C. 1998).

unfair to the Utility, and harmful to the long-term best interests of Utility ratepayers. It would not save ratepayers money, and would spawn further costly legal disputes. The Committee, therefore, respectfully urges this Court to dismiss the Appellant's appeal or reject their claim for relief as without merit.

Respectfully submitted this 6th day of December,2006.

Reed T. Warnick
Paul Proctor
Assistants Attorney General
Attorneys for The Utah Committee of Consumer Services

Certificate of Service

I certify that I have served two copies of the Responsive Brief of the Utah Committee of Consumer Services on the following, either by hand-delivery or by first class mail:

Janet I. Jenson (4226)
Jenson Stavros & Guelker
350 South 400 East, Suite 201
Salt Lake City, UT 84111
Attorneys for Petitioners Bud Allen, et al.

C. Scott Brown (4802)
Colleen Larkin Bell (5253)
Questar Gas Company
1809 East First South
P.O. Box 45360
Salt Lake City, UT 84145

Gregory B. Monson (2294)
Richard R. Hall (9856)
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
Attorneys for Respondent Questar Gas Company

Sander J. Mooy (2309)
Public Service Commission
400 Heber Wells Building
160 East 300 South
Salt Lake City, UT 84111
Attorney for Respondent Public Service Commission

_____